IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10327 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

KANJIBHAI K PARMAR

Appearance:

1. Special Civil Application No. 10327 of 1999

MR HS MUNSHAW for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/03/2004

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation has filed this petition under Article 227 of the Constitution

of India challenging the judgment and award made by the Industrial Tribunal, Ahmedabad dated 12th February, 1999 in Reference [IT] No. 298 of 1993. By the said award the penalty imposed by the appellate authority on the respondent of placing him on the lowest pay-scale on the post of Conductor is set aside and instead the respondent is visited with the penalty of stoppage of two increments with permanent effect.

2. The respondent on the relevant date i.e. on 12th February, 1986 was on duty in the bus of the petitioner being plied on the route between Indore and Ahmedabad. When the bus was checked at Santrod at about 4.30 p.m. by the Checking Squad, it was found that the respondent had not issued five tickets of Rs.10/= to five and half passengers travelling in the said bus from Indore for the State of M.P. It was further found that though he had collected fair of Rs.16-80 ps. from the passengers who had boarded the bus from Dahod, he had issued one less ticket of Rs.10/-. It was also found that to one passenger who was travelling from Dahod to Godhra, he had not issued tickets. The Checking Squad, therefore, recorded the statements of the concerned passengers and also five persons travelling ticketless. Ultimately the petitioner decided to hold inquiry against him and the respondent was, therefore, issued charge-sheet. He was also called upon to submit his explanation or reply within seven days of the receipt of the charge-sheet. During the inquiry it was found that the charges levelled against the respondent were true and, therefore, the petitioner had thought it fit to pass order dated 19th June, 1987 of dismissal from service against the respondent. The respondent, however, challenged this order before the first appellate authority and the first appellate authority set aside the order of dismissal from service, but instead passed order placing him in the lowest pay-scale vide order dated 3rd September, 1987. Against the said order, respondent further approached the second appellate authority by filing Second Appeal, but the same was dismissed. He, therefore, approached, by raising industrial dispute which was referred for adjudication by the Deputy Labour Commissioner, Ahmedabad, vide order dated 30th November, 1993, to the Industrial Tribunal.

2.1. Before the Tribunal the respondent filed his statement of claim wherein several averments were made by him. His main grievance was that because of the impugned order, he has suffered substantial monetary loss. The petitioner contested the said proceedings by filing written statement at Exh. 9. According to the

petitioner, the averments that had been made by the respondent in the statement of claim were not true. It averred that with a view to afford to the respondent adequate opportunity of the hearing, the inquiry was held and he was permitted to lead evidence, etc. Further that when the appellate authority had interferred with the order of dismissal and set it aside, nothing further was required to be done and the said order was justified. The petitioner also produced during the proceedings of the reference, a default card in respect of the respondent with a view to show his past conduct. However, at the end of the proceedings, the Tribunal came to the conclusion that looking to the nature of misconduct and the nature of punishment imposed upon the respondent, the punishment was grossly disproportionate and required interference by it. The Tribunal, therefore, set aside the order of first appellate authority and instead imposed penalty of stoppage of two increments with permanent effect. It is this judgment and award, which are now under challenge.

3. Mr. Jayesh Barot, learned advocate appearing for Mr. H.S. Munshaw for the petitioner has submitted that the judgment and award of the Tribunal are erroneous in as much as considering the nature of the misconduct of respondent and also his past history, order of penalty passed by the first appellate authority was just and proper and it required no interference. He has further submitted that this petitioner was in the habit of committing acts of misconduct of this nature wherein the monetary aspect was involved. In other words, according to him, the respondent was a habitual offender and no leniency is required to be shown in this case. He has also placed reliance on two decisions of the Apex Court.

3.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent has tried to support the judgment and award made by the Industrial Tribunal. He has further submitted that the default card relied on by the petitioner had not been supplied to the respondent nor it was produced during the Course of inquiry. He has also submitted that the restoration of the original order of punishment will result into substantial monetary loss to the respondent, which will not be commensurate with his guilt established.

4. Having gone through the record of the petition and also having considered carefully the submissions made by the learned advocates for the parties, it appears that the allegations against the

respondent with regard to non-issuance of tickets were duly proved during the inquiry. The validity of the inquiry was not in challenge. It appears that while passing the order of termination of service, the Disciplinary Authority of the petitioner had kept in view the past history of the respondent. It was only when the authority found that the respondent was incorrigible, it had passed the order of dismissal. However, when it was challenged in appeal by the respondent the first appellate authority was gracious enough to quash and set aside it and instead to impose punishment of placing the respondent in the lowest pay-scale. The Second Appeal filed by the respondent was dismissed.

4.1. Form plain reading of the judgment and award of the Tribunal, it clearly appears that it has been swayed away due to the sympathy for the respondent and thereby had committed grave error in setting aside the order passed by the first appellate authority. With regard to the default card produced by the petitioner, the approach of the Tribunal appears to be absolutely erroneous. Merely because the same was not produced before the Inquiry Officer and some blanks are filled in by the department subsequently, does not render it doubtful so as to be discarded in toto. There was no reason for the petitioner to prepare a false default card against the respondent, when the first appellate authority had even shown grace of quashing the order of dismissal and grant him reinstatement in service. It also appears from the service record of the respondent that he had been involved in more than 50 cases, half of them are relating to monetary defalcations. If that be so, there was no reason for the Tribunal to interfere with the order of punishment imposed by the first appellate authority. In my view, considering the overall picture of the case, even the first appellate authority had taken very lenient view in the matter. Be that as it may, when the respondent is found to be habitually indulging into malpractice in the mater of issuance of tickets, no undue sympathy can be shown to him. Even solitary act of such nature has been viewed very seriously by the Apex Court in a decision rendered by it in the case of Karnataka State Road Transport Corporation v/s. B.S. Hullikatti reported in (2001) 2 S.C.C. 574. The Apex Court has held as under :-

> "As the respondent had been in service as a Conductor for nearly 22 years, it is difficult to believe that he did not know what was the correct fare which was to be charged. The principle of res ipsa loquitur, namely, the facts speak for

> themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellate Corporation. Therefore, the order of dismissal should not have been set aside, but as in the meantime the respondent has already superannuated, on the special facts of the case, the order of reinstatement need not be set aside. But it is directed that the respondent would not be entitled to any back wages at all but he would be entitled to the retiral benefits."

4.2. Thus, on the similar set of facts, the Apex Court has said that no misplaced sympathy could be shown to such delinquent. Similar view has been taken by the Apex Court in another decision rendered in the case of Janatha Bazar v/s. Secretary reported in (2000) 7 S.C.C. 517. Ofcourse in the said case the concerned delinquents were employees of a cooperative society and they were charged from committing acts of criminal breach of trust, etc. There also the Apex Court has laid down that while exercising jurisdiction under section 11-A of the I.D. Act no sympathy should be shown to the culprits.

5. In view of the aforesaid, in my opinion, the judgment and award of the Industrial Tribunal are erroneous and they deserve to be quashed and set aside. It is therefore, ordered that the judgment and award passed by the Industrial Tribunal dated 12th February, 1999 in Reference [IT] No. 298 of 1993 are hereby quashed and set aside and the order of punishment imposed by the first appellate authority dated 3rd September, 1987 is restored.

5.1. It is pointed out by Mr. M.H. Rathod at this juncture that the petitioner has not been paid his provident fund and also retiral benefits, if permissible in law. If that be so, the petitioner is directed to pay the same to the respondent at the earliest and in any case not later than 31st May, 2004.

6. The result is that the petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.